IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10515 of 1998
With
SPECIAL CIVIL APPLICATION No. 10516 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ENSHRINE ENGINEERS & 3 - Petitioner(s)
Versus
NAVSARI PEOPLES COOPERATIVE BANK LTD - Respondent(s)

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Appearance :
MR AR MAJMUDAR for Petitioner(s) : 1 - 4.
MR JB PARDIWALA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 22/06/2006

ORAL JUDGMENT

1. The petitioners herein had borrowed sum of Rs.2,50,000/- and Rs.7,50,000/- from the

respondent-bank in February, 1991. Since the amount was not repaid, the respondent-Bank filed two separate Lavad Suits before the Board of Nominees. The suits came to be decreed in absence of representation by the petitioners. There is dispute about the exact status of service of summons of the Court of Board of Nominees. The assertion of the petitioners is that summons were not served. The averment of the respondent on other hand is that summons is duly served but the petitioners did not participate in the proceedings.

2. The petitioners appealed against the order passed by the Board of Nominees on 4-8-1995 decreeing the suit in favour of the respondent-Bank. The appeals were however, rejected by the said Cooperative Tribunal by a common judgement dated 23-9-1998. The appeals were not entertained on the ground of unexplained delay. The petitioners have therefore, approached this Court challenging the orders passed by the authorities below.

3. Learned advocate Shri Majmuddar for the petitioners submitted that though initially the petitioners had fallen behind in the payment schedule, during the pendency of the proceedings particularly before the Cooperative Tribunal, the petitioners discharged their full liabilities so far as principal borrowing is concerned.

4. He submitted that the petitioners have already repaid a total sum of Rs. 10 lakhs to the respondent-Bank. The dispute now survives only with respect to the rate of interest that Bank can charge. He further submitted that the fact that the petitioners did borrow the amount from the Bank and that petitioners required to repay the same is not disputed. He further submitted that the petitioners had certain valid defence to oppose the charging of 19% penal interest by the Bank. He submitted that the petitioners never got proper opportunity to defend their case and the Tribunal refused to condone even a minor delay in filing the appeal.

5. In so far as the decision of the Tribunal to refuse to condone the delay is concerned, I find that the Tribunal took a very strict view of the delay in filing the appeals. There was sufficient reason to condone the delay demonstrated by the petitioners and a delay of approximately 11 months should not have been allowed to confirm an ex-parte decree, if at all, the petitioners should have been put to certain terms for pursuing their appeals on merits. In that view of the matter, I am inclined to set aside the order passed by the Cooperative Tribunal. Ordinarily, it would have been appropriate for this court to remand the proceedings to the Tribunal for fresh consideration of issues on merits. However, in the present case, there is an additional factor which calls for consideration. Admittedly, the decree was passed by the Board of Nominees without full adjudication only on the ground that there was no participation by the petitioners. Eventually, therefore, even upon remand, the Tribunal will be required to

consider further the remand of the proceedings before the Board of Nominees. This would add one more stage to the litigation and would be detrimental to the interests of the Bank and would further cause hardship to the petitioners also.

6. Considering these aspects of the matter, I find that entire issue requires to be referred to the Board of Nominees for fresh consideration on merits. For the above purpose, order dated 4-9-1995 passed by the Board of Nominees in respective Lavad Case filed by the respondent-Bank as well as impugned common order dated 23-9-1998 passed by the Cooperative Tribunal in Appeals No, 254/1996 and 255/1996 filed by the petitioners herein are quashed. It is clarified that the Board of Nominees will examine and try only the question of appropriate interest to be charged from the petitioners for the sum borrowed from the respondents and the question of principal sum borrowed and already repaid by the petitioners shall not be reopened.

7. The petitioners had borrowed the sum in the year 1991 utilised the same for number of years. Ultimately, the principal sum was paid after much delay. Even the petitioners cannot completely deny the liability to pay the interest. In that view of the matter, the above order is passed in favour of the petitioners on the condition that they deposit with the Bank a sum of Rs. 1 lakh within a period of 8 weeks from today. In case the petitioners fail to abide by this condition, the above direction granted in favour of the petitioners will automatically stand nullified and the orders impugned in this petitions will revive. This deposits will be subject to adjustment upon the outcome of Lavad Suits.

8. With these directions, the petitions are disposed of. Rule made absolute to the above limited extent with no order as to costs.

(Akil Kureshi,J.)

(raghu)